

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 33

AMERICAN RED CROSS, HEART OF
AMERICA BLOOD SERVICES REGION

Employer¹

and

Cases 33-RC-4947 and
33-RC-4948

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA - UAW

Petitioner²

**REGIONAL DIRECTOR'S DECISION, ORDER,
AND DIRECTION OF ELECTION**

The Employer collects, manufactures, and distributes blood products in various counties located in Illinois, Iowa, and Missouri. Petitioner filed petitions with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent two separate units of the Employer's employees. In Case 33-RC-4947, Petitioner seeks a unit of all team leaders and in Case 33-RC-4948, Petitioner seeks a unit of all collections specialists I, collections specialists II, collections technicians I, collections technicians II, mobile unit assistants I, mobile unit assistants II, and mobile unit supply clerks.³ A hearing officer of the Board held a hearing and the parties have filed briefs.

As evidenced at hearing and in the briefs, the parties disagree on three issues: (1) whether an overall unit of employees is the only appropriate unit; (2) whether the team leaders

¹ Employer's name appears as amended at hearing.

² Petitioner's name appears as amended at hearing.

³ Petitioner's unit is also intended to include any combination of these job classifications. All of the petitioned-for employees are collectively referred to as "collections employees."

are supervisors; and (3) if the team leaders are not supervisors, whether a unit limited to team leaders is appropriate.

The Employer and the Petitioner agree that any units found appropriate should include all of the Employer's facilities and mobile operations. The Employer contends, however, that the petitioned-for units are not appropriate and that the only appropriate unit must also include all non-supervisory employees in the following departments: Donor Services (Collections), Donor Recruitment, Hospital Services, Laboratory Services, Donor Health and Records (Donor Suitability), Quality Assurance, Purchasing, General Services, Administration, Public Support (Communications), and Reference Laboratory. The Employer also contends that the team leaders should be excluded as supervisors from any unit found appropriate here. The Petitioner contends that the team leaders are not supervisors and that a separate unit of team leaders is appropriate. The Employer contends that even if the team leaders are not supervisors, a separate team leader unit is inappropriate. The Employer and the Petitioner agree that the Employer is a healthcare institution within the meaning of the Act and that per diem employees should be included in any unit found appropriate if they satisfy the Board's traditional eligibility formula as articulated in *Davison-Paxon Co.*, 185 NLRB 21 (1970).

I have carefully considered the evidence and arguments presented by both parties on each of the three issues. As discussed below, I conclude that a bargaining unit limited to the Employer's collections employees and including the collections assistant is an appropriate unit; that the team leaders are not supervisors within the meaning of the Act; and that a unit limited solely to team leaders is not appropriate. As the team leaders do not constitute a separate appropriate unit, I shall include the team leaders in the collections unit found appropriate here and I shall dismiss the petition in Case 33-RC-4947. There are approximately 42 employees in the team leader unit sought by Petitioner; 165 employees in the collections unit sought by Petitioner; 342 employees in the unit sought by the Employer; and 208 employees in the unit found appropriate here.

I. OVERVIEW OF EMPLOYER'S OPERATIONS

The Employer is an unincorporated operating unit of the American National Red Cross with a region encompassing more than half the State of Illinois and parts of Iowa and Missouri. The Employer recruits donors, collects their blood, manufactures various blood products, and distributes those products to a clinic and approximately 42 hospitals located throughout its region. The Employer's operations are headquartered at its Peoria, Illinois Center. The Employer also has 11 fixed blood drive sites located in various Illinois and Iowa cities as well as a distribution center in Chicago, Illinois. Much of the Employer's blood collection is accomplished through mobile blood drives that are conducted almost daily throughout the Employer's region.

The Employer's chief executive officer (CEO) is responsible for the overall operations within the region and all department heads report directly to him. The Employer's operations are divided into 13 separate departments: Donor Services (Collections), Donor Recruitment, Hospital Services, Laboratory Services, Donor Health and Records (Donor Suitability), Quality Assurance, Purchasing, General Services, Administration, Public Support (Communications), Reference Laboratory, Accounting/Finance and Human Resources. Each of these departments has its own department head and separate lines of supervision.

The Employer's blood collection process begins with donor recruitment, performed primarily by staff within the Donor Recruitment department. The Employer recruits individual donors and sponsor groups, which are organizations and businesses willing to sponsor mobile blood drives on their premises. Collections employees, except for the mobile unit supply clerks and including team leaders, work the mobile blood drives as well as the blood drives at the Employer's fixed donor sites. These collections employees screen the donors, collect the blood, and transport the blood back to either the Peoria center or the Chicago facility, where it is tested and processed in the laboratories and then distributed to the hospitals by the Hospital Services department.

Personnel management for all employees is centrally administered from the Employer's Peoria center. All employees in the region are covered by the same employee handbook and are subject to the same disciplinary and personnel policies. All employees are notified internally of job opportunities within the region and all employees enjoy the same fringe benefits, including medical and dental insurance, life insurance, retirement, tuition, and disability plans. All employees share a common pay scale with pay grades ranging from grade 1 through 10 with steps in between.

II. THE APPROPRIATE UNIT

The Employer contends that the petitioned-for unit, limited to collections employees, is not appropriate and that the unit should also include all non-supervisory employees in the following departments: Donor Services (Collections), Donor Recruitment, Hospital Services, Laboratory Services, Donor Health and Records (Donor Suitability), Quality Assurance, Purchasing, General Services, Administration, Public Support (Communications), and Reference Laboratory. Although the employees in these departments clearly share some terms and conditions of employment and may constitute an appropriate unit, the Board has substantial discretion when it selects an appropriate bargaining unit. There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be "appropriate." *Bartlett Collins Co.*, 334 NLRB 484 (2001). Furthermore, a union is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965). In *Faribault Clinic*, 308 NLRB 131, 133 (1992), the Board held that in the health care industry, as in any other, unions are not required to organize in the most comprehensive unit available or even the most appropriate unit – they need only select an appropriate unit.

Since the Employer is a non-acute health care facility, the proper test to determine the appropriate bargaining unit is the "empirical community of interest test." *Park Manor Care Center*, 305 NLRB 872 (1991); *Allen Health Care Services*, 332 NLRB 1308, 1309 fn. 4 (2000).⁴ Under that test, the Board considers community-of-interest factors, as well as those factors considered relevant by the Board in rulemaking proceedings and prior cases involving either the unit at issue or the particular type of health care facility in dispute. The Board, however, did not consider blood bank facilities and blood bank units during the rulemaking process. See *Collective Bargaining Units in the Health Care Industry*, 284 NLRB 1528 (1988) and 284 NLRB 1580 (1989). Blood banks, in structure, operations, and staffing, are unique and quite different from other health care facilities such as hospitals and nursing homes. However, in *Park Manor*, the Board noted that certain general principles set forth in the rulemaking procedure are equally applicable to unit determinations in non-acute care facilities. The Board noted that in exercising its discretion to determine appropriate units, it must steer a careful course between two undesirable extremes. If the unit is too large, it may be difficult to organize and difficult for the union to represent. If the unit is too small, it may be costly for the employer to deal with and may even be deleterious for the union by too severely limiting its constituency and hence its bargaining strength. The Board's goal is to find a middle-ground position, to allocate power between labor and management by "striking the balance" in the appropriate place, with units that are neither too large nor too small. *Park Manor*, supra, at 876 quoting 53 Fed.Reg. 33904, 284 NLRB at 1534. See also *McLean Hospital Corp.*, 311 NLRB 1100, 1111 (1993). Accordingly, in determining the appropriate unit, this balance must be struck; traditional community of interest factors considered, as well as prior cases dealing with blood banks.

The Board has approved limited bargaining units other than wall-to-wall units in blood bank employer units. In *Sacramento Medical Foundation Blood Bank*, 220 NLRB 904 (1975), the Board sanctioned a unit limited to medical laboratory technologists only. In *Greene County*

⁴ Accordingly, I reject Employer's assertion that the "disparity of interests" test should be applied.

Chapter American Red Cross, 221 NLRB 776 (1975), the Board found appropriate a unit limited to blood dispatchers, rejecting the employer's argument that such a unit was inappropriate in as much as it excluded nurses who worked with the dispatchers. In finding a unit limited to blood dispatchers appropriate, the Board applied community of interest factors. Similarly, in *Midwest Region Blood Services*, 324 NLRB 166 (1997), a post-rulemaking case, the Board approved a unit of collection employees, mobile unit assistants, and supply clerks. Thus, there is ample precedent that less than wall-to-wall units are appropriate in blood bank settings and that such units adequately strike the balance envisioned by the Board. Moreover, as discussed in detail below, consideration of traditional community of interest factors also support the conclusion that a unit limited to collections employees is appropriate.

In determining whether a unit is appropriate for collective bargaining, the Board traditionally considers various community of interest factors including past bargaining history; general working conditions, wages and benefits; degree of functional integration; common supervision; nature of employee skills, training, and function; interchange and contact among employees; and work situs. See *Washington Palm, Inc.*, 314 NLRB 1122, 1126-27 (1994).

As no bargaining history exists for the employees at issue, that factor cannot be considered. All of the Employer's employees are covered by the same personnel policies, employee handbook, pay grade scale, and benefit package. The other factors will be considered below on a department-by-department basis, commencing with Donor Services, the department encompassing the collections employees.

DONOR SERVICES

Donor Services is the largest department and generally covers the collection of blood, documentation, and training. The department's specific job classifications, functions, and duties are set forth below commencing with the collections employees, who are the petitioned-for employees. Petitioner does not seek to include any employees other than the collections employees. However, I have determined that the collections assistant must be included and that the collections support specialist may vote subject to challenge. All other employees in this department and in all of the other departments described below have not been included in the unit.

Collections Employees: The four mobile unit supply clerks work at the Peoria center in central supply, which is a separate area devoted solely to storage and maintenance of supplies and equipment for the mobile drives. The collections specialists and technicians collect blood products at fixed donor sites and mobile drives. The number of these collections employees assigned to each site or drive varies in accordance with the anticipated number of donors and all of these collections employees work at both fixed donor sites and on mobile drives. Employees holding the classification of mobile unit assistants I and mobile unit assistants II (hereafter collectively referred to as MUAs) only work on mobile drives, although 10 of the 27 MUAs are also qualified to work as collections specialists and/or technicians. A team leader heads each mobile drive.

On mobile drives, the collections team may travel in the Employer's vans or their personal vehicles to the blood drive sites. The equipment and supplies for the blood drive are prepared and packaged by the mobile unit supply clerks and delivered to the site by the MUAs. The MUAs in the Chicago area also prepare and package their equipment and supplies at the Chicago facility as no mobile unit supply clerks are employed at that location. Upon arrival at the site, the collections team helps the MUA unload equipment and supplies and then set up the site. The site generally includes a registration and history area, the donor room, and the

refreshment area or canteen. The collections employees set up the tables, computers, beds for donors, and other equipment and supplies, and perform certain quality control checks to ensure that the team has adequate supplies and the equipment is functioning properly.

Once a donor arrives for donation, a Red Cross informational brochure is given to the donor, ideally by a volunteer. The donor is registered and the health history process commences to ensure donor eligibility. During this process, the donor's vital signs are taken and a small blood sample is tested, a series of questions asked, and an electronic blood donation record (EBDR) is created on the laptop computer. The EBDR helps to determine the donor's eligibility to donate and track the donation. The donor is then taken to the donor area where his blood is drawn, either by a simple vena puncture or by apheresis.⁵ The blood products are drawn into blood bags and then packed in ice in coolers. After the blood donation, the donor is directed to the canteen for refreshment and rest.

At the end of the blood drive, the team members disassemble the drive site and pack up equipment and supplies. Forms completed during the blood donation process by collections employees are reviewed by the team leader. Another collections employee reviews any paperwork or forms completed by the team leader. The MUA transports the coolers containing the blood units and the completed paperwork to the Laboratory Services department at the Peoria or Chicago facility.

The process of blood collection at fixed sites is essentially the same, except that some equipment and supplies are stored at the site so set up and transportation is simplified. The record is unclear as to the extent of storage at all of these sites. Not all of the fixed sites are staffed every day nor do they have blood drives every day.

⁵ The donor is hooked up by vena puncture to an apheresis machine which is programmed to draw blood from the patient, segregate either plasma, platelets, or red cells, and return to the donor components not donated. Generally, apheresis is conducted at separate mobile blood drives, but apheresis and whole blood donation are performed simultaneously at the Peoria center.

The collections technicians and specialists generally rotate work stations during a blood drive as the majority of these employees are qualified to do all of the tasks on most blood drives.⁶ Medical experience is preferred for these positions: medical assistant or phlebotomy training is preferred for the collections technicians I positions; the collections technician II position requires medical assistant or phlebotomy training, satisfactory performance as collections technicians I, or equivalent experience; and the collections specialist positions require an RN/LPN or equivalent experience. The MUAs are required to have driving experience and the appropriate licensure. The mobile unit supply clerk position requires a high school diploma. All of these are OSHA I positions because of potential contact with blood or blood components as a result of splashes, spills, and/or needlesticks. All of these employees are paid hourly: collections technician I, mobile unit supply clerk, and MUAs are pay grade 3; collections technician II is grade 4; collections specialist I is a grade 6; and collections specialist II is a grade 8.

The MUAs, collections specialists, and technicians are divided into teams and assigned to a particular team leader.⁷ Each team is supervised by one of seven team supervisors. The mobile unit supply clerks are directly supervised by the Donor Services manager.

Collections Assistant: The Employer employs one collections assistant. He spends most of his time working in the donor room at the Peoria center assisting collections specialists and technicians with donor care, registration, labeling, and packaging of certain blood products. He is not qualified in health history or vena puncture, but can discontinue a blood draw. He also prepares and packages supplies for mobile apheresis drives. The collections assistant wears scrubs, as do collections technicians and specialists, and is classified as OSHA Level I due to frequent contact with blood and blood products. He is supervised directly by the apheresis

⁶ The Employer employs 90 collections specialists, 6 collections technicians II, and 38 collections technicians I. The job descriptions for these positions indicate that the specialists and technicians II can perform health histories and vena puncture, while the technicians I can only perform vena puncture.

⁷ These teams do not necessarily work together.

manager, who also directly supervises some team supervisors, but he is not assigned to a team as are the collections technicians and specialists. He is at a pay grade 1. The position requires only a high school diploma or equivalent experience.

Collections Support Specialist: The Employer employs one collections support specialist. The collections support specialist works solely at the Peoria center, but in the course of her duties, she has daily contact with collections employees. When available,⁸ she is responsible for the “201 line”, which the mobile team leaders call if problems or questions arise, such as questions about donor eligibility or if the drive needs to end early or late. The collections support specialist is also responsible for all problem management reports. She investigates the more serious level 2 or 3 problems which arise in blood collection, analyzes the root cause of the problems, and recommends solutions for those problems. Along with the Donor Services supervisor, she serves as a permanent member of the panel which interviews all prospective applicants for positions in the Donor Services department. The collections support specialist assists approximately once per month at the Peoria center in the donor room performing health histories if donor back-ups occur. The collections support specialist is directly supervised by the Donor Services supervisor (Mobile), who also serves as a team supervisor supervising five team leaders and their respective teams of collections employees. The collections support specialist is not assigned to a collections team. She wears business attire, but dons a lab coat when taking health histories. The collections support specialist is an OSHA I position and requires 2 years’ experience in the collections department, ability to perform health histories, and experience in the Employer’s problem management system is preferred. The position is a pay grade 8. The current collections support specialist was formerly a team leader and collections specialist.

Schedulers: Schedulers, as well as the remaining classifications set forth below, are not part of the collections employees unit petitioned for. The two schedulers work at the Peoria

center and prepare the blood drive and training schedules, which are distributed 3 weeks ahead and are for 1 week at a time. The schedules show the time and location of the blood drives, directions to the drive, and vehicle, team leader, collections specialist, technician, and MUA assignments for each drive and training session. The schedulers also prepare an individual schedule for these employees. One scheduler prepares the original schedule and the other deals with schedule changes. The schedulers are assisted by an administrative assistant I and an administrative assistant II, one of whom serves as a back up scheduler. They also help schedule vehicles, make motel reservations, verify expenses and hours, review DOT logs, prepare letters, reports and charts, sort and distribute mail. These employees have daily contact with collections employees seeking schedule changes or on related matters. These employees are supervised by a team supervisor but are not assigned to any collections team. These employees wear business attire and are classified as OSHA Level III due to lack of exposure to blood or blood products. The schedulers are pay grade 6, the administrative assistant I is a pay grade 4, and the administrative assistant II is a pay grade 5.

Training Specialists: The training specialists work at the Peoria center and provide classroom training, mainly to collections employees. They provide foundation training in areas such as good practices, CPR and first aid to all Red Cross employees. They do not do any clinical training on blood drives, that training is performed by team leaders or other collections employees. The training specialists are supervised by the training specialist supervisor and assisted by an administrative assistant I. The training specialists are salaried, pay grade 7, and the position requires a bachelor's degree or equivalent experience and a minimum 2 years' experience in a healthcare environment. The training specialists all previously worked as mobile collections employees. The administrative assistant I is a pay grade 4.

Education Coordinators: The two education coordinators manage the training for their assigned departments. They ensure that all required training is given; that all instructors are

⁸ The record does not reflect how often this is. The team supervisors also answer the 201 line.

qualified; and prepare required paperwork and documentation. They generally do not perform any training. One of the education coordinators occasionally pre-medicates granulocyte donors because an RN is required for that function. The education coordinators are supervised by the education manager.

The education coordinators are assisted by an administrative assistant II and an education AA II/document control specialist, who are also supervised by the education manager. The education AA II/document control specialist maintains the electronic library and updates the electronic binder disc that contains general regulations and is used as a reference on all mobiles. The administrative assistant is in charge of the software program used by the education coordinators and maintenance of records. The education coordinators are salaried at pay grade 8; the administrative assistants are pay grade 5.

Document Control Specialist: The document control specialist works at the Peoria center and enters the time worked for collections staff and updates and maintains the binders containing all regulations that are present at all mobile and fixed site blood drives. The document control specialist is supervised by the collection operations support supervisor. The document control specialist is required to have an Associate's degree with minimum 3 years of document control experience; a Bachelor's degree and mobile experience is preferred. The position is a pay grade 5 and OSHA Level III due to lack of contact with blood and blood products. A back-up from the collections staff will be trained on this position in the future.

Problem Management Specialist: The problem management specialist works at the Peoria center. The problem management specialist assists in managing the problem management process in the department and has regular contact with the collections employees. The problem management specialist is supervised by the collection operations support supervisor and 2 years' experience in the collections department is preferred. The position is a pay grade 6 and OSHA Level III due to the lack of contact with blood and blood products.

EBDR Specialist: The EBDR specialist works at the Peoria center. He maintains the laptop computers used on mobile blood drives which generate the EBDR. He occasionally goes to mobile sites to troubleshoot problems or to deliver replacement equipment. He is supervised by the collection operations support supervisor. This position requires 2 years' experience in the collections department. This position is a pay grade 6 and the record does not reflect the OSHA Level.

Administrative Assistant II: This administrative assistant is located at the Peoria center and is supervised by the Donor Services manager. She performs some secretarial duties, enters problem management data into the computer, and does billing for Hospital Services.

Analysis

The collections specialists, technicians, and MUAs share a particularly strong community of interests. They share the same type of supervision in that all are assigned to designated team leaders under the supervision of a team supervisor; moreover, these team assignments change from time to time. There is also a very high degree of contact and functional integration, as they are all involved in the processing of donors and collection of their blood and related products. They work together at fixed donor sites and travel and work together as a team on mobile drives. During blood donation operations, these collections employees are able to rotate among the tasks to be performed, and they have similar skills and operate the same equipment and devices. These employees share unique interests and concerns given their daily, intimate contact with donors and exposure to donors' blood and other fluids.

The mobile unit supply clerks also share a strong community of interests with the specialists, technicians, and MUAs. Although they are separately supervised, their entire function is to directly support the mobile blood collection operations. They have daily contact with the MUAs and are also classified as OSHA Level I due to potential contact with blood and blood products, and therefore share many of the same concerns. Although the record testimony concerning the duties of the mobile unit supply clerks was superficial, the job description

indicates that the clerks can perform set-up registration, pre-check, temperatures, labeling, and packing blood and that they can provide reaction care and discontinue blood collections as needed. Thus, this job description indicates potential donor contact. The job description also states that the clerks perform quality control on equipment and supplies, which is an overlapping job function with the other collections employees. Also, the MUAs in the Chicago area perform the supply clerk functions because there are no mobile unit supply clerks at the Chicago facility.

Although all of the employees in the Donor Services department share many interests and common lines of supervision, I find that the collections employees share a sufficiently distinct community of interests separate from most of the other Donor Services employees so as not to require the inclusion of all of the other Donor Services employees in the petitioned-for unit. Thus, the document control specialist, problem management specialist, EBDR specialist, the training specialists, the education coordinators, and the administrative assistants are all separately supervised and their functions, while necessary and supportive, are not essential to and directly integrated with the actual collections process in the same manner as that of the collections employees including the mobile unit supply clerks. Further, their functions do not overlap as do the functions of the collections employees. The pre-medication of granulocyte donors performed by one of the education coordinators is not an overlapping function. The collections employees do not perform this task and this task requires an RN degree which is generally considered a professional degree. The Board has held that a mixed professional-nonprofessional employee unit cannot be found, as a matter of law, to be the sole appropriate unit for collective bargaining purposes. *South Hills Health System Agency*, 330 NLRB 653 (2000).

Similarly, while the schedulers and their administrative assistants also provide support to the actual collections process, their function is also in the nature of administrative support and is not as functionally integrated. Although the schedulers and their administrative assistants are

supervised by a team supervisor, they are not members of the collections teams and thus the impact of the shared supervision is diminished. For example, these employees do not have the same evaluation process that the collections team members share. Although there is one administrative assistant who is directly supervised by the same manager supervising the mobile unit supply clerks, this administrative assistant performs secretarial duties unrelated to those of the mobile unit supply clerks and is only indirectly supportive of the collections process. Moreover, all of these other Donor Services positions are designated OSHA Level III, which indicates that their normal work involves no exposure to blood or blood components, and thus these employees do not share the same concerns as those employees in the petitioned-for unit.

The Employer emphasizes that a collections employee will be trained as a back-up to the document control specialist. However, this has not yet occurred and therefore cannot be used to determine unit placement. *Presbyterian Hospital*, 285 NLRB 935 (1987).

The Employer contends that all administrative assistants should be included in the unit as plant clericals relying on *S & S Parts Distributors Warehouse, Inc.*, 277 NLRB 1293 (1985). In that case, some clerical employees were included in a warehouse unit as plant clericals because they shared a strong community of interest with the unit employees. However, other clerical employees were not included based on the same community of interest analysis. As set forth above, none of the administrative assistants in the Donor Services department share such a strong community of interest with the collections employees so as to require their inclusion in the unit.

Many of the employees in donor services who have not been included in the unit found appropriate here were previously employed in unit positions and some unit employees have previously held non-unit positions. Some employees in other departments have also previously held unit positions. All of these “transfers” were made pursuant to the Employer’s internal job posting and hiring procedures and were voluntary and permanent. These voluntary and

permanent transfers are of limited significance for establishing community of interest. See, e.g. *Overnite Transportation Company*, 331 NLRB 662, 663 (2000).

Although the Petitioner does not seek the inclusion of the collections assistant, I find that the collections assistant cannot appropriately be excluded from the unit. Although the collections assistant is not assigned to a team or supervised by a team supervisor, he is supervised by the apheresis manager who supervises a team supervisor. More importantly, the collections assistant spends most of his time in the Peoria donor room working with other unit employees and performing duties associated with the actual blood collection including donor care, registration, labeling, and packaging of certain blood products. Thus, his position is designated OSHA Level I, the same as the collections employees. Accordingly, I find no basis on which to exclude the collections assistant from the unit and I shall, therefore, include him in the unit found appropriate here.

The collections support specialist also shares a greater community of interests with the collections employees than those of the other excluded Donor Services employees. Thus, this position is OSHA Level I and does involve some direct donor care as well as frequent contact with the mobile collections employees via the 201 line. However, the record establishes that the 201 line is also manned by team supervisors; that the collections support specialist is a permanent member of the hiring panel, and that her duties involve recommending solutions to serious systemic problems. Although no party specifically contends, and the record fails to conclusively establish, that the collection support specialist is a supervisor or manager, the issue was not specifically litigated. Thus, in view of her greater community of interests with the collections employees as well as the unclear nature of her authority, I will permit the collections support specialist to vote subject to challenge.

DONOR RECRUITMENT

This department is headed by the Donor Recruitment manager and is responsible for the recruitment of donors and sponsors. Most of the employees in this department are donor

recruitment representatives or customer service representatives. The donor recruitment representatives recruit businesses and organizations to sponsor blood drives. They assist in the planning of the blood drives; provide campaign materials; inspect the sites to ensure they are adequate; and otherwise continue to work with the sponsor to ensure the success of the drive. The donor recruitment representatives frequently show up at their blood drives to network and will, if donors are backed up, do volunteer work such as greet donors and serve refreshments in the canteen. They are not qualified to perform any of the functions of the collections employees. The customer service representatives provide support to the donor recruitment representatives. They handle administrative tasks that need to be done in the office, such as calling a sponsor and reviewing publicity plans; running call lists of donors so the sponsor can call them to come to the drive; and mailing informational and promotional packets to sponsors. All of these employees have some contact with the collections employees, either at the blood drives or by phone, to advise them of changes in donor schedules or other donor matters.

The site coordinator, apheresis-Quincy, is responsible for apheresis scheduling and recruitment of donors at the Quincy fixed site. He frequently is present when the blood is collected at the site, signing in donors, comforting donors, and working in the canteen. The Employer intends to expand this position's responsibilities in the future to include supply inventory management and donor file management, but he does not have these responsibilities at this time.⁹

This department also includes other positions which recruit and provide recruitment support services as well as the donor room receptionist at the Peoria center. None of the positions in this department are OSHA Level I positions because they are not expected to have contact with blood and blood products. There have been no permanent transfers from this

⁹ Board law clearly states the unit placement of an employee must be based on facts as they exist at the time of the hearing. See *Presbyterian Hospital*, supra.

department to a collections position or vice versa. The only temporary transfer was on one occasion, a collections technician required a light-duty position and requested work as a telerecruiter in this department. The transfer lasted 30 to 40 days.

Although the Donor Recruitment employees have frequent contact with the collections employees and their work is functionally integrated in the sense that donors must be recruited so that the collections employees can perform their work, their interests are sufficiently distinct so as not to require the inclusion of the Donor Recruitment employees in the petitioned-for unit. The Donor Recruitment employees are separately supervised in a separate department and their skills, training, and functions are entirely different. Many of the employees in this department are eligible for bonuses tied to their sales-type functions. These bonuses are not available to collections employees. The dearth of permanent and temporary transfers between the two groups underscores these differences. *J.C. Penney Co., Inc.*, 328 NLRB 766 (1999), relied upon by the Employer to support its request for a broader unit, is distinguishable. In *J.C. Penney*, the Board included telemarketers over the petitioner's objections where the evidence showed they were loaned to other "included" departments when work demands required extra

help; they participated with all employees in the annual inventory; they performed common functions with certain other employees regarding customer inquiries; and there was evidence of routine permanent interchange and some temporary interchange. None of these key factors are present here. Accordingly, I do not find that the community of interest of the Donor Recruitment employees is strong enough to mandate their inclusion in the petitioned-for unit. **HOSPITAL SERVICES**

Hospital Services employees work at the Peoria center and the Chicago facility. The Hospital Services employees process orders for blood from hospitals, pull the blood from the refrigerator or freezer and then deliver the blood. In Peoria, the Hospital Services employees do not have frequent job-related contact. Approximately twice per month, a Hospital Services employee will go to a mobile blood site and pick up the blood. These pickups are necessary on long mobiles so that the blood can be tested and/or processed in a timely manner. This task is usually performed by volunteers.

Contact between collections employees and Hospital Services employees occur more frequently in Chicago because the blood collected at mobiles in Chicago is delivered by the MUAs to Hospital Services employees. These deliveries occur daily. Approximately twice per month, Chicago-area MUAs are given the opportunity to deliver blood products to hospitals for Hospital Services. This is offered because the MUAs in this area are not always able to make their 40 hours-per-week performing their regular duties on mobile blood drives. The Hospital Services employees do not perform any collections tasks.

Although the Hospital Services employees have frequent contact with collections employees in the Chicago area and MUAs occasionally perform Hospital Services work, I do not find that the community of interest of the Hospital Services employees is strong enough to mandate their inclusion in the petitioned-for unit. The Hospital Services employees are not involved in the actual collections work, they perform clearly different functions, and are in a separate department with separate supervision. The incidental contact which occurs with the

delivery of blood and monthly interchange is not sufficient to require their inclusion in the unit.

LABORATORY SERVICES

This department encompasses the Main and Component Laboratory. These laboratories are located in the Peoria center. All blood collected by the collections staff comes into these laboratories where it is processed into different components and readied for distribution. Thus, MUAs have daily contact with Component Laboratory employees when they deliver the blood and accompanying paperwork to the Component Laboratory. The Component Laboratory employees fill out a checklist regarding the documents and blood to verify that they have received everything and that all paperwork is in order. If something is missing, they will check with the MUA to locate it. Generally, this process takes a few minutes. The record discloses no evidence of any interchange or transfers between the collections employees and Laboratory Services employees. The experience and education of the Laboratory Services employees is specialized. For example, the laboratory services technician, the position held by the majority of the employees in this department, is required to be a certified medical laboratory technician or have a BS in a medical or science-related field or at least 1 year's experience as a technical assistant in a laboratory.

Although the MUAs have frequent contact with the Laboratory Services employees and their work is functionally integrated to the extent that the blood collected must be tested and processed into a usable product, their interests are sufficiently distinct so as not to require the inclusion of the Laboratory Services employees in the petitioned-for unit. The Laboratory Services employees are separately supervised in a separate department and their specialized laboratory skills, training, and functions are entirely different. The complete lack of any permanent or temporary transfers between the two groups underscores these differences.

DONOR HEALTH AND RECORDS (DONOR SUITABILITY)

The Donor Health and Records department reviews and maintains donor records including the BDRs and other forms completed by collections employees. These employees perform no collections work. They have contacts with collections employees when they have questions or problems with the forms, when they collect the forms, and when they inform the team leaders if a special donor is going to be at the site. None of these contacts occur on a daily basis. On one occasion, a collections employee worked light duty for 6 weeks in this department and one employee permanently transferred from a collections position to this department. These two instances of transfer as well as the contact are not sufficient to require the inclusion of these employees in the collections unit where the two groups of employees have different supervision, skills, and functions.

QUALITY ASSURANCE

The quality assurance specialists oversee quality control in all departments. The process includes reviewing paperwork as well as physical inspections of the various departments, including mobile blood drives, to ensure that procedures are followed and safe practices maintained. The process improvement specialists track and review problems and verify corrective actions for all departments. Both of these positions have contact with collections employees in the course of their duties as well as contacts with employees in all other departments. The record does not reflect the frequency of these contacts. They perform no collections work, but some of the employees holding these positions were previously collections employees. Others were previously employed in Laboratory Services and Donor Recruitment.

Although these employees share some interests with the collections employees, they share the same interests with all employees of the Employer and therefore their interests are not specifically aligned with those of the collections employees. In view of their separate departments and supervision as well as their distinct functions, I find that inclusion of the Quality

Assurance employees in the petitioned-for unit is not required. The cases relied upon by the Employer are not controlling. In *Firestone Tire and Rubber Company*, 112 NLRB 571 (1955), the Board included a quality control clerk in the unit as a plant clerical. However in that case, the parties had agreed to include quality control employees and inspectors in the production and maintenance unit. In *Wiedemann Machine Co.*, 118 NLRB 1616 (1957), the Board included quality control employees in the unit as requested by the Petitioner, over the objections of the Employer. More apposite is the Board's decision in *United Finish Div., Beatrice Foods*, 222 NLRB 883, fn. 3 (1976), where the Board excluded quality control employees from a production and maintenance unit explaining that the unit placement of quality control employees is dependent upon community of interest considerations.

PURCHASING AND GENERAL SERVICES

The stock inventory assistant in the Purchasing department stocks the warehouse at the Peoria center and provides supplies for all departments including supplies needed for central supply and the mobile operations. The General Services employees are responsible for the maintenance and repair of the Employer's physical facility, vehicles and equipment, including those used by collections employees. Thus, these employees have frequent contact with collections employees in the normal course of their duties. However, these employees do not share the same department and supervision as the collections employees and their skills and functions are entirely different. These employees share the same community of interests with all employees who work at the Peoria center and their interests are not specifically aligned with the collections employees any more than any other group of the Employer's employees. Thus, there is no basis to mandate the inclusion of these employees in the petitioned-for unit.

ADMINISTRATION, PUBLIC SUPPORT AND REFERENCE LABORATORY

The Employer seeks to include an administrative assistant who performs clerical duties in Administration. There is no evidence to establish any significant community of interests between this clerical employee and the petitioned-for unit and therefore no basis to mandate this employee's inclusion in the unit.

The Public Support department coordinates the volunteers at fixed sites, mainly for the hospital services and the Peoria center canteen. This department has minimal contact with collections employees and therefore, due to the lack of substantial contact, different functions and separate supervision, inclusion of these employees cannot be required.

The Reference Laboratory employees test and process blood products. The record contains no evidence of any contact between the Reference Laboratory employees and collections employees. These employees are separately supervised in a separate department and their specialized laboratory skills, training, and functions are entirely different than the collections employees. In view of the complete lack of contact, different supervision, skills and functions, inclusion of these employees cannot be required.

Accordingly, I find the collections employees constitute a functionally distinct group with special interests sufficiently distinguishable from those of the other employees in Donor Services and the other departments. Therefore, I shall not include these non-collections employees in the unit found to be appropriate here.

III. SUPERVISORY STATUS OF TEAM LEADERS

The Employer contends the team leaders should be excluded from the unit as supervisors. The traditional test for determining supervisory status used for all employees, including health care employees, is: (1) whether the employee has the authority to engage in any 1 of the 12 criteria listed in Section 2(11) of the Act; (2) whether the exercise of such authority requires the use of independent judgment; and (3) whether the employee holds the

authority in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-574 (1994).

The burden of proving supervisory status lies with the party asserting that such status exists. *Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., *Vencor Hospital - Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. *Michigan Masonic Home*, 332 NLRB 1409 (2000). "[W]henver the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements, without detailed, specific evidence of independent judgment, are insufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Job descriptions, relied upon by the Employer, are only paper authority and are not given any controlling weight by the Board. *Training School at Vineland*, 332 NLRB 1412, 1416 (2000); *Audubon Regional Medical Center*, 331 NLRB 374, 421 (2000).

The Employer employs 42 team leaders and approximately 165 collection employees in classifications sought by the Petitioner. Team leaders have approximately four to six collections employees reporting to them, including collection specialists, collection technicians, and mobile unit assistants. The team leaders report to team supervisors whom the parties agree are statutory supervisors. Team supervisors "supervise" the team leaders, monitoring, them and giving them direction. Team supervisors are also responsible for assessing, monitoring and resolving personnel problems in accordance with the Employer's established policies. According to the director of donor services, team supervisors are also responsible not only for the team leaders but also for the collections employees who report to the team leaders.

The Employer contends that the team leaders are supervisors because they have the authority to assign work; to responsibly direct employees; to discipline, suspend, and terminate employees, and to effectively recommend such actions; to hire and effectively recommend hiring; to reward employees through evaluations leading to wage increases; promote employees and effectively recommend promotion; and to adjust grievances. The Employer does not contend nor does the record reflect that the team leaders have the authority to transfer, lay off, or recall employees.

Assignment of Work

The team leaders' role in assigning work does not demonstrate supervisory status. Schedulers, not the team leaders, assign collections employees to a particular blood drive. Schedulers also determine whether a team leader will be assigned to a blood drive as a team leader or a regular member of the collections staff. Team leaders do not approve schedule changes, nor do they approve time off or overtime. Team leaders do not initial or sign employees' time sheets, nor can they adjust time sheets. Team leaders can assign specific employees to take breaks when donor flow allows and in accordance with the Employer's established policies on break times. The team leaders' authority to assign breaks in accordance with the Employer's policies requires no more than routine clerical judgment. *Providence Hospital*, 320 NLRB 717, 732 (1996).

Team leaders cannot end a blood drive early or extend a blood drive, though team leaders are instructed to allow donors to donate if they have already signed-in by the closing time. Team leaders can ask collection team members if they want to leave early if a blood drive is slow. However, team leaders cannot force anyone to leave a blood drive early. Team leaders can also allow an employee to go home when the employee is ill. Schedulers, however, are responsible for finding a replacement for the sick employee. This limited authority to allow employees to go home when work is slow or when they are ill does not require independent

judgment and is insufficient to confer supervisory status. *Azusa Ranch Market*, 321 NLRB 811, 812 (1996); see also *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1336 (2000).

The assignment of tasks to the team members also does not require the use of independent judgment. Team leaders determine which employee will be assigned to handle EBDR, health histories, or drawing blood. The authority to assign is only supervisory where the purported supervisor exercises independent judgment or discretion in making assignments based on his or her own assessment of an employee. Independent judgment is demonstrated by evidence that an individual has discretion to assign work of differing degrees of difficulty or desirability on the basis of his or her own assessment of an employee's ability or attitude. See *Palagonia Bakery Co., Inc.*, 339 NLRB 515, 535 (2003). The team leaders' discretion in assigning team members to a particular task is curtailed by the employee's training as set forth on the schedule. If an employee is only trained for health histories, then the employee can only be assigned to set up and work health histories. The team leader cannot assign tasks to an employee who has not been trained. These assignments made on the basis of well-known and limited skills are simply a routine matching of skills to requirements. *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002); *Clark Machine Corp.*, 308 NLRB 555, 555-556 (1992).

Moreover, employees who are trained in more than one task often rotate tasks throughout the blood drive. This rotation severely undermines any argument that the initial assignments require independent judgment. The rotation of team members is facilitated by the fact that the assigned tasks are routine and well known to the employees. If the assigned tasks are so routine that they do not require a purported supervisor to differentiate between employee skill levels, the individual making the assignments will be found to be nonsupervisory. See *Patagonia Bakery Co., Inc.*, *supra*. There is no evidence the trained employee's skills differ significantly or that it is necessary for the team leaders to resolve conflicts or problems with respect to the skills or strengths of the employees trained on a particular task. This lack of specific evidence is construed against the Employer. *Michigan Masonic Home*, 332 NLRB 1409

(2000). The authority to assign work, alone, without the use of independent judgment, is not indicative of supervisory authority. *McGraw-Hill Broadcasting Co., Inc.*, 329 NLRB 454, 456 (1999).

Responsible Direction

The Employer has failed to establish that team leaders responsibly direct the work of the collections employees. Responsible direction means the individual is held accountable and responsible for the work of the employees they direct, and exercises significant discretion and judgment in directing these employees. *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002). The Employer argues that team leaders are held accountable for employees' mistakes because team leaders can be put on a personal improvement plan (PIP) for mistakes made by team members and are also evaluated by how their team performs. The only performance evaluation provided for a team leader notes that the team leader was put on a PIP due to her failure to properly review BDR reports and catch mistakes, and this team leader was required to spend time in the document review department to improve her ability to review paperwork for problems. However, this discipline is for improper review, i.e. not catching the mistake, not for the mistakes made by the employees. Moreover, there are many record instances of employees receiving PIPs for such work performance problems as a high Q & S rate and high donor deferral, yet there is no evidence their team leaders were put on a PIP for these performance mistakes. There is also no evidence that team leaders have received any warnings or other discipline for performance mistakes made by their team members. This lack of evidence is construed against the Employer. *Michigan Masonic Home*, supra.

The Employer also failed to establish that the team leaders exercise significant discretion and independent judgment when directing the work of the team members. While the team leaders do monitor the work of the team members to ensure they follow the Employer's policies and procedures, this responsibility does not require the exercise of significant discretion and independent judgment. While the team leaders can point out tasks that the employees

have not performed properly, the ability to make sure the team members perform their duties and to call their attention to a particular task that has not been performed properly, does not require independent judgment. *Franklin Home Health Agency*, supra at 831; *Beverly Health and Rehabilitation Services, Inc.*, 335 NLRB 635, 669 (2001).

The Employer has established policies which delineate how and by whom tasks can be performed. Team leaders cannot deviate from established protocols or standard operating procedures in directing the team members to perform certain tasks. Moreover, the team members' tasks are limited, repetitive, and well-known to the employees. Thus, the degree of independent judgment is reduced when directing employees in such tasks. *Franklin Home Health Agency*, supra; *Beverly Health and Rehabilitation Services, Inc.*, supra; *Evangeline of Natchitoches, Inc.*, 323 NLRB 223, 223-224 (1997). While the team leaders are frequently the highest-ranking employees at the blood drive, there are no specific instances of team leaders handling emergencies or unusual circumstances on their own. If problems arise, the team leaders are instructed to call their supervisor, who is always available by phone. Merely notifying a supervisor of an emergency or unusual situation is insufficient to confer supervisory status. *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995); *Northcrest Nursing Home*, 313 NLRB 491, 498-499 (1993). Also, having the team supervisor available is further evidence that the team leaders do not exercise independent judgment. *Waverly-Cedar Falls Health Care, Inc.*, 297 NLRB 390, 392 (1989). Accordingly, I have concluded that any judgment used by the team leaders to assign work and direct the team employees to perform discrete tasks is sufficiently curtailed by the Employer's established policies and procedures, and the tasks are of such a routine and repetitive nature, that the degree of judgment used to direct such tasks falls short of the independent judgment required for supervisory status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Chevron Shipping Co.*, supra at 381 (1995).

Discipline/Suspension/Termination

The team leaders' limited participation in the disciplinary process does not confer supervisory status on the team leaders. There is some record evidence that team leaders, along with any other collections employee, can fill out an employee observation report. The Employer presented no observation reports and there is no evidence these reports contain disciplinary recommendations or that they automatically lead to discipline. Reporting on incidents of employee misconduct is not supervisory where the reports do not always lead to discipline and do not contain disciplinary recommendations. To confer supervisory status, the exercise of disciplinary authority must lead to personnel actions, without the independent investigation or review of other management personnel. *Franklin Home Health Agency*, supra. The Employer has failed to establish that employee observation reports constitute discipline or lead to discipline.

The Employer contends team leaders can issue verbal and written warnings. The Employer's donor services operations supervisor testified that all written discipline must go through the human resources department which ensures the information is accurate and that an investigation has been completed. The six documented verbal warnings and the nine written warnings presented by the Employer were all signed by the team supervisor and a human resources representative in addition to the team leader. The disciplinary form itself notes that it must be signed by human resources before being issued to an employee. Of the 15 warnings presented by the Employer, only 1 was prepared by a team leader and only after the team leader had discussed the situation with the team supervisor. This warning was also signed by human resources. Further, most of the warnings presented by the Employer were for poor attendance and failing to report to the team supervisor, none of which is monitored by the team leader and therefore would not be known to the team leaders unless brought to their attention by the team supervisors. One team leader testified she "verbally" addressed the issue of a team member sleeping on the job, but only after being advised of this issue by a team

supervisor. There is no evidence this “verbal” address resulted in any formal discipline or had any impact on the employee. The Employer has failed to establish that team leaders can issue disciplinary warnings leading to personnel actions without any independent investigation or review by higher management and therefore has failed to establish that team leaders exercise independent judgment in issuing discipline. *Franklin Home Health Agency*, supra.

The Employer also contends team leaders can send employees home and can suspend employees. The Employer presented only one specific example of a team leader sending an employee home. In that instance, the team leader sent a collections employee home for being insubordinate, the details of which are not contained in the record. After the employee went home as requested, the team leader contacted her team supervisor and wrote up a report. Two stipulated supervisors then conducted an independent investigation to get the employee’s version of the events. No disciplinary action was issued to the employee as a result of the incident. Thus, the record fails to establish that sending an employee home automatically results in discipline or that such action occurs without independent investigation by higher management. While there is also some conclusionary testimony that team leaders can send employees home for flagrant or egregious conduct, such as intoxication, such action is also insufficient to demonstrate supervisory authority. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999); *Phelps Community Medical Center*, 295 NLRB 486, 492 (1989). Sending employees home for flagrant violations is not indicative of supervisory status because the offenses are such obvious violations of the Employer’s established rules that no independent judgment is involved in the decision. *Michigan Masonic Home*, 332 NLRB at 1411, fn. 5 (2000). The conclusionary testimony offered in support of this authority, without detailed, specific evidence of independent judgment, is insufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

The Employer also failed to establish that team leaders exercise supervisory authority by suspending or terminating employees. The Employer only presented two suspensions issued to

collections employees and both were signed by human resources prior to being presented to the employee. The record does not reflect who prepared the suspensions or what weight, if any, was given to input by team leaders into the decision to suspend these employees. The Employer also presented only two specific instances of team leaders being involved in terminations. One employee was terminated for falsifying quality control documents and another was terminated for leaving a mobile drive without permission. In both instances, the team leader reported the conduct to the team supervisor. With both the suspensions and the terminations, human resources conducted independent investigations with the employees involved to determine whether their conduct warranted disciplinary action. There is no evidence any employee was suspended or terminated solely by a team leader or upon the recommendation of a team leader. The authority to effectively recommend means that the recommended corrective action is taken without any independent investigation by a higher management authority, not that the recommendation was eventually followed. *Children's Farm Home*, 324 NLRB 61 (1997). All suspensions and terminations are independently investigated by human resources. Thus, the Employer has failed to establish that team leaders discipline employees on their own authority or that they effectively recommend discipline.

Hiring/Interview

The Employer contends some, but not all, team leaders can hire and effectively recommend the hire of employees through their participation in the interview process. The evidence is inconclusive, however, to establish that team leaders hire or effectively recommend the hiring of employees. Human resources, not the team leaders, initiates the hiring process by conducting the initial interviews with candidates. After the initial interview, candidates are then interviewed by a panel. The record does not reflect the purpose of the initial interview by human resources or whether candidates that human resources finds unacceptable are even interviewed by the panel. The panel for collections employees consists of the donor services operations supervisor, usually two team supervisors, the collections support specialist, and on a

few occasions, team leaders. One of the team leaders who participated in the panel stated the panel members asked standardized questions of the candidates, “graded” the candidate’s responses, and then made recommendations to human resources.

The Employer only presented evidence of three team leaders participating on interview panels on three different occasions, and one of these three individuals is no longer a team leader and thus not one of the 42 team leaders in question. The record fails to reflect the outcome of any of these group interviews or what weight, if any, was given to the participation of the team leaders in the interview process, or what weight was given to the panel’s recommendations by human resources. This lack of specific evidence is construed against the Employer. *Michigan Masonic Homes*, supra. The mere participation in the hiring process, particularly where higher management participates in the process, absent the authority to effectively recommend hire, is insufficient to establish supervisory authority. *Training School At Vineland*, 332 NLRB 1412, 1417 (2000). Finally, the Employer does not take the position that the collections support specialist, who also participates in the interviews, is a supervisor but rather seeks to include this position in the bargaining unit.

Evaluation/Reward

The Employer contends team leaders evaluate employees thereby determining their wage increases and possibly their retention. The record evidence on evaluations is conflicting and therefore inconclusive to establish that the team leaders exercise supervisory authority in performing evaluations. *Phelps Community Medical Center*, 295 NLRB at 490 (1989). The record reflects team leaders fill out work performance reviews on team members. Team members are rated in various categories, such as timeliness of work which includes timeliness of training, quality of work which includes deferrals and Q & S rates, and punctuality which includes attendance. There are four possible ratings for each category, with “exceeds expectations” being the highest, then “fully successful”, “needs improvement”, and finally “clearly unsatisfactory” as the lowest. Employees who receive overall ratings of needs

improvement and clearly unsatisfactory do not receive wage increases. Employees who receive fully successful receive a standard wage increase determined by the Employer's national headquarters, and employees who receive the highest rating get an above average raise also determined by national headquarters.

The record evidence is contradictory with respect to the involvement of team supervisors in the evaluation process. Human resources initially notifies team supervisors, not team leaders, that a performance evaluation is due on a particular collections employee. The team supervisors then send the performance evaluation to the team leader to be completed. Team supervisors have a written set of criteria for determining the ratings for the categories on the performance evaluation. This written criteria was not presented by the Employer. This written criteria includes such information as what number of Q & S ratings, missed trainings, absences, and deferrals is acceptable, unacceptable, or exceeds expectations. One of the Employer's witnesses, the donor services supervisor for Chicago, testified that this written criteria also includes a requirement that the team supervisors review the evaluations for conformance with the criteria before the evaluation is given back to the team leader to give to the staff member. While one team leader said she gave evaluations to employees before giving the evaluations to her team supervisor to review, this team leader's team supervisor contradicted such testimony claiming she reviewed the evaluations before the team leaders presented them to the employees. Another team leader stated she gave a performance evaluation to an employee first before giving it to her team supervisor to review and was later instructed by her team supervisor that the evaluations are to go to the team supervisor first for approval before being given to the employee.

The record establishes that team supervisors, not the team leaders, monitor such performance issues as attendance, Q & S ratings, deferral ratings, and missed or late training. The team supervisors then send monthly reports to the team leaders containing this information and noting any performance problems with the collections employees. None of these monthly

reports were presented by the Employer. Team leaders then use this information provided by the team supervisors in preparing the evaluations. The team leaders then compare this information to a written set of performance standards which the Employer failed to present. After the team leaders complete the evaluations, the team supervisors review the evaluations to ensure they conform to another set of written criteria not presented by the Employer, to ensure the evaluations are “fair”, and to ensure the team leaders have addressed any issues or problems raised by the team supervisors. One team supervisor presented by the Employer also testified that she provided guidance to her team leaders on what overall rating to give an employee, particularly when the ratings for the individuals categories differed. Team supervisors can and do change ratings and direct team leaders on what to address in the evaluations. Further, employees, even team leaders, can appeal their evaluations to higher management, including to the CEO, who can then change the evaluation.

None of the evaluations presented by the Employer contains the highest rating of exceeds expectations or the lowest rating of clearly unacceptable. One collections employee and his team leader testified his team leader wanted to give him a rating of exceeds expectations but the team supervisor would not allow it. The team supervisor involved testified she did give “guidance” to the team leader on what the overall rating should be for this employee. The vast majority of employees receive ratings of fully successful and receive standard raises determined by headquarters. A few evaluations contained ratings of needs improvement, which resulted in no wage increase for those individuals. All of these evaluations, however, were signed by the team supervisor prior to being given to the team leader to give to the employee. In addition, most of these evaluations were also signed by other management officials in addition to the team supervisor, including one signed by an interim CEO. The current CEO testified that team leaders do not have the sole authority to determine wages, nor do they have the “final say” on what an individual’s wage increase will be. The CEO stated that while the evaluations filled out by the team leaders are a “strong” recommendation on pay raises, the

employee would not get a pay increase solely on such recommendation without “approval” at the second level of review by the team supervisor.

There is no evidence of an employee being retained, terminated, or promoted on the basis of the performance evaluations. Some employees do receive PIPs automatically if they receive less than a fully successful rating in a particular category, and these PIPs are generally for attendance, missed training, high Q & S rates, and high deferral rates, which, as noted, are monitored by the team supervisors. The team leaders obtain information for these PIPs from the team supervisors who alert them when these areas become “problems” for their team members. Receiving a PIP does not prevent an employee from receiving a fully successful rating and therefore a pay increase. There is no evidence of an employee receiving discipline as a result of a PIP, nor is there any specific evidence of a team leader determining whether an employee has successfully completed a PIP. The human resources manager testified someone in human resources reviews and signs PIPs, though the record fails to reflect the purpose behind such review.

In these circumstances, where the evidence is inconclusive and contradictory, particularly with respect to the team supervisors’ involvement in the evaluation process and the content of the written criteria used to complete the evaluations, supervisory status cannot be based on such indicia. See *Phelps Community Medical Center*, 295 NLRB at 490 (1989). Thus, the record evidence is insufficient to establish the team leaders complete evaluations using independent judgment. Filling out evaluations based on information provided by the team supervisors, and using established written criteria to determine ratings with additional “guidance” by team supervisors, requires no more than routine clerical judgment. Team supervisors review the completed evaluations to ensure they do not deviate from the established written criteria and to ensure the team leader has addressed all the performance issues the team leader brought to their attention. Team supervisors direct team leaders to correct any deficiencies in the evaluations. Even the CEO characterized the evaluations as

“suggestions” that must be approved by a higher level of management who can and have changed ratings. In these circumstances, the evaluations do not constitute effective recommendations on wage increases where they are subject to review and approval by higher management officials. *Children’s Farm Home*, supra. Further, the Board has consistently held that assessing an employee’s ability to perform the required work using pre-established standards or guidelines does not constitute an effective recommendation to hire or promote, nor does it otherwise establish supervisory status. *Aardvark Post*, 331 NLRB 320, 321 (2000); *Hogan Mfg.*, 305 NLRB 806, 807 (1991).

Similarly, the team leaders’ completion of competency evaluations does not reflect the use of supervisory authority. The record reflects some evidence that team leaders complete competency evaluations on employees which are also reviewed by team supervisors. The Employer, however, failed to present any of the competency evaluations filled out by the team leaders, which lack of evidence is construed against the Employer. *Michigan Masonic Home*, supra. Further, as noted above, determining an employee’s competency, or assessing an employee’s ability to perform the required work using pre-established standards or guidelines, does not constitute an effective recommendation to hire or promote, nor does it otherwise establish supervisory status. *Aardvark Post*, supra; *Hogan Mfg.*, supra.

Promotion

The team leaders have no authority to promote employees nor do they effectively recommend promotions. The record reflects only one specific instance of a team leader recommending that a collections employee be promoted to a team leader, and the employee was ultimately promoted. The record fails to reflect, however, whether the individual who made the decision to promote the employee followed the team leader’s recommendation without making any independent investigation. In these circumstances, the fact that a promotion to team leader was made based on a team leaders’ input does not constitute effective recommendation. *Consolidated Services, Inc.*, 321 NLRB 845 (1996).

Adjustment of Grievances

The Employer contends that the team leaders adjust grievances because they can resolve disputes between employees by talking to them, preparing an employee observation report or by placing them in separate areas of the blood drive. This handling of “squabbles” between employees is considered routine and not supervisory. *St. Francis Medical Center – West*, 323 NLRB 1046, 1047-48 (1998).

Secondary Indicia

The Employer presented evidence of secondary indicia, such as attendance at meetings and retreats and taking leadership classes. While the Board has examined other secondary factors not set forth in Section 2(11) of the Act, these factors, without more, are insufficient to establish supervisory status. *Ken-Crest Services, Inc.*, 335 NLRB 777, 779 (2001). Thus, attendance at meetings, retreats, and leadership classes are, at most, secondary indicia which, in the absence of statutory indicia, are insufficient to establish supervisory status. *Auto West Toyota*, 284 NLRB 659, 661 (1987).

Accordingly, I conclude that the Employer has failed to meet its burden of establishing that team leaders are supervisors. The case cited by the Employer in support of supervisory status, *Super X Drugs of Texas, Inc.*, 217 NLRB 1103 (1975), is clearly distinguishable. The pharmacists in question had the authority to suspend employees, to grant time off or refuse to grant time off, to use independent judgment to assign specific tasks to specific employees, and to determine when to call in replacements for absent employees, and to sign and approve payroll, none of which authority is possessed by the team leaders, as noted above. As I have found the team leaders to be employees and not supervisors, I will address the issue of whether the team leaders have a sufficient community of interest to warrant a unit separate from the collections unit found appropriate herein.

IV. APPROPRIATENESS OF TEAM LEADER UNIT

The Petitioner contends the team leaders should constitute a separate unit, primarily because they spend 50 percent of their time performing team leader duties which other collections employees do not perform. The Employer, contrary to the Petitioner, contends the team leaders, if they are not found to be supervisors, do not constitute an appropriate separate unit. I find the team leaders do not possess a community of interest separate and distinct from the other collections employees found appropriate here to justify a separate unit. Team leaders, like the collections employees, are hourly employees. They receive the same benefits, are subject to the same personnel policies, and share the same supervision as collections employees. The team leaders function as part of the collections team at blood drives. They spend approximately 50 percent of their time performing the same duties as other collections employees, including registering donors, taking health histories, and performing phlebotomies, and they work along side the other collections employees at the same physical location. They have also helped set up and tear down blood drives. Additionally, some of the paperwork filled out by the team leaders is completed jointly with other collections employees. MUAs, for example, assist team leaders in completing paperwork to verify the number of supplies brought to a particular blood drive. Not only do team leaders perform the same job functions as the collections employees when serving as a team leader, but they can also be assigned to blood drives as regular members of the team, such as a collections specialist or a collections technician.

In these circumstances, the team leaders do not constitute a functionally distinct group with special interests sufficiently distinguishable from those of the collections employees included in the unit found appropriate here. As noted, team leaders spend a significant part of their regular work time performing work identical to that of the other collections employees; the team leaders and collections employees are a highly integrated work force working in the same physical location under identical working conditions with similar job functions and the same supervision. All these factors point to a lack of separate interests of team leaders and to the

substantial community of interests they share with the other collections employees. See *Brand Precision Services*, 313 NLRB 657 (1994); *Consolidated Packaging Corp.*, 178 NLRB 564 (1969). Accordingly, I find the grouping of team leaders chosen by the Petitioner to be an arbitrary one and I will dismiss the petition in Case 33-RC-4947. As the Petitioner expressed its willingness at hearing to include team leaders in the unit found appropriate here if they were not found to constitute a separate appropriate unit, I shall include the team leaders in the collections unit found appropriate here.

V. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act in Case 33-RC-4947.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act in Case 33-RC-4948.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, part-time and per diem¹⁰ collections specialists I, collections specialists II, collections technicians I, collections technicians II, mobile unit assistants I, mobile unit assistant I/collections specialists I, mobile unit assistant I/collections technicians I, mobile unit assistants I/CTI-HH, mobile unit assistants II, mobile unit assistant II/collections specialists I, mobile unit assistants II/CTI-HH¹¹, mobile unit supply clerks, collections assistant, and team leaders employed by the Employer in its Donor Services department, ¹²EXCLUDING office clerical and professional employees, guards and supervisors¹³ as defined in the Act and all other employees¹⁴.

VI. ORDER

The petition filed in Case 33-RC-4947 is dismissed.

VII. DIRECTION OF ELECTION IN CASE 33-RC-4948

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America - UAW. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period immediately prior to the date of this Decision, including employees who did not work

¹⁰ Per diem employees who work an average of 4 hours per week in the 13-week period preceding the eligibility cut-off date are eligible to vote. *Davison-Paxon*, 185 NLRB 21, 24 (1970); *Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990).

¹¹ At hearing, Petitioner stated that its petitioned-for unit is intended to include any combination of the specialist, technician, and mobile unit assistant classifications. I have specifically named all of the combination positions that the record establishes actually exist.

¹² Because the record evidence is inconclusive as to the collections support specialist, the collections support specialist may vote subject to the challenge procedures.

¹³ The parties stipulated that the individuals listed on Employer's Exhibit 71, attached as Exhibit A, are either supervisors under Section 2(11) of the Act because they responsibly direct employees and effectively recommend discipline, or managerial employees who formulate and effectuate management policies, and should be excluded from the unit. Accordingly, and in agreement with the parties, I find that these individuals are appropriately excluded from the unit.

during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers, but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military service of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized

¹⁴ The parties stipulated that the individuals listed on Employer's Exhibit 72, attached as Exhibit B, are confidential secretaries and should be excluded from the unit. Accordingly, and in agreement with the parties, I find that these individuals are appropriately excluded from the unit.

(overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in Subregion 33, Hamilton Square, 3000 Hamilton Boulevard, Suite 300, Peoria, Illinois 61620, on or before **December 22, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (309) 671-7095 or by electronic mail at Region 33@nlrb.gov. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact Subregion 33.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m. EST on **December 29, 2005**. This request may not be filed by facsimile.

Dated: December 15, 2005
at: St. Louis, Missouri

/s/ Ralph R. Tremain
Ralph R. Tremain, Regional Director
National Labor Relations Board, Region 14